

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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JEFF N. ROSE,

Petitioner,

v.

ROBERT LEGRAND, *et al.*,

Respondents.

Case No. 3:13-cv-00267-MMD-WGC

ORDER

The Court previously denied Petitioner Jeff N. Rose's first amended petition for writ of habeas corpus under 28 U.S.C. § 2254. (ECF No. 44.) On appeal, the United States Court of Appeals for the Ninth Circuit affirmed in part, reversed in part, and remanded with instructions to conditionally grant the writ pending a new trial. (ECF No. 48.) In particular, the Court of Appeals reversed the Court's denial of Ground 1. Accordingly, the Court orders as follows.

It is therefore ordered that the Court's Order addressing the merits of the petition (ECF No. 44) is vacated in part as to the denial of relief on Ground 1, that the Court's prior Judgment (ECF No. 45) denying relief on the petition as amended is vacated, and that the Clerk of Court will reopen this matter.

It is further ordered that the petition for a writ of habeas corpus, as amended, is conditionally granted on Ground 1 and that, accordingly, the state court judgment of conviction of Petitioner Jeff N. Rose in No. 02C188264 in the Eighth Judicial District Court for the State of Nevada hereby is vacated and Petitioner will be released from all forms of custody and all other restrictions and consequences that flowed from said judgment within 30 days of entry of this order, unless the state files a written election in this matter within that 30-day period to retry Petitioner and thereafter commences jury selection in

1 the retrial within 120 days following the election to retry Petitioner, subject to reasonable
2 request for modification of the time periods in the judgment by either party pursuant to
3 Rules 59 or 60. All remaining claims have been, remain, and are denied with prejudice
4 following upon the Court's prior Order (ECF No. 44) to the extent that it has not been
5 vacated, with regard to claims other than Ground 1, and further following upon the
6 decision (ECF No. 48) of the Court of Appeals.

7 The Clerk of Court further will enter final judgment accordingly, conditionally
8 granting the petition for a writ of habeas corpus as provided above and then again closing
9 this case. It is the Court's intention that the judgment entered pursuant to this order will
10 be a final judgment. Final judgment is entered subject to a possible later motion to reopen
11 the matter to enter an unconditional writ if then warranted, as a matter of enforcement of
12 the judgment.

13 The Clerk of Court further will substitute Nevada Department of Corrections
14 Director Charles Daniels for Respondent Robert LeGrand.

15 The Clerk of Court further will provide a copy of this order and the judgment to the
16 Clerk of the Eighth Judicial District Court, in connection with that court's No. 02C188264.

17 It is further ordered that Petitioner will continue on release subject to the same
18 conditions that the Court imposed (ECF Nos. 56, 57) pending, *inter alia*, Respondents'
19 notice of election.

20 DATED THIS 9th Day of October 2020.

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25 MIRANDA M. DU
26 CHIEF UNITED STATES DISTRICT JUDGE
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